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Attorneys for Defendants

OHANA MILITARY COMMUNITIES, LLC and

FOREST CITY RESIDENTIAL MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Plaintiffs Kenneth Lake, Crystal Lake,
Harold Bean, Melinda Bean, Kyle
Pahona, Estel Pahona, Timothy
Moseley, and Ashley Moseley,

Plaintiffs,

CIVIL NO. 16-00555-LEK-KJM

STIPULATION FOR (1) DISMISSAL
WITH PREJUDICE OF ALL OF
PLAINTIFFS HAROLD BEAN AND
MELINDA BEAN'S CLAIMS IN

vs.

Ohana Military Communities, LLC,
Forest City Residential Management,
Inc.; and DOE Defendants 1-10,

Defendants.

THE FIRST AMENDED
COMPLAINT; AND (2) DISMISSAL
WITH PREJUDICE OF PLAINTIFFS
KENNETH LAKE, CRYSTAL LAKE,
KYLE PAHONA, RYAN WILSON,
AND HEATHER WILSON'S
ELEVENTH CLAIM FOR RELIEF
(NUISANCE), TO THE EXTENT
THE CLAIM IS BASED UPON
CONSTRUCTION DUST
GENERALLY

TRIAL: October 21, 2019
JUDGE: Hon. Leslie E. Kobayashi

**STIPULATION FOR (1) DISMISSAL WITH PREJUDICE OF ALL OF
PLAINTIFFS HAROLD BEAN AND MELINDA BEAN'S CLAIMS IN THE
FIRST AMENDED COMPLAINT; AND (2) DISMISSAL WITH
PREJUDICE OF PLAINTIFFS KENNETH LAKE, CRYSTAL LAKE,
KYLE PAHONA, RYAN WILSON, AND HEATHER WILSON'S
ELEVENTH CLAIM FOR RELIEF (NUISANCE), TO THE EXTENT THE
CLAIM IS BASED UPON CONSTRUCTION DUST GENERALLY**

IT IS HEREBY STIPULATED by and between Plaintiffs Kenneth
Lake, Crystal Lake, Harold Bean, Melinda Bean, Kyle Pahona, Timothy Moseley,
and Ashley Moseley (collectively, "Plaintiffs") and Defendants Ohana Military
Communities, LLC and Forest City Residential Management, LLC, successor by
conversion to Forest City Residential Management, Inc. (collectively
"Defendants"), by and through their undersigned counsel, as follows:

WHEREAS, on May 22, 2019, Defendants filed their Motion for Summary Judgment No. 1 Based Upon Plaintiffs' Inability to Prove a Required Element of their Claims; Motion for Summary Judgment No. 2 Based Upon Plaintiffs' Inability to Prove Damages; and Motion for Summary Judgment No. 3 Addressing Specific Counts and Plaintiffs ("MSJ No. 3") (Dkt. No. 147).

WHEREAS, on September 30, 2019, the Court issued its Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment No. 1 and No. 2 ("MSJ Order") (Dkt. No. 187). The MSJ Order granted summary judgment in favor of Defendants on all of Plaintiffs' claims remaining in the case, except for Plaintiffs Kenneth Lake, Crystal Lake, Kyle Pahona, Ryan Wilson, and Heather Wilson's claims in Count XI alleging that construction dust, in general and without regard to the dust's content, constituted a nuisance (the "Non-Contaminant Nuisance Claim").

WHEREAS, if granted, MSJ No. 3 would dispose of the Non-Contaminant Nuisance Claim.

WHEREAS, Plaintiffs have consulted with their counsel, and Harold Bean and Melinda Bean have requested to dismiss all of their claims with prejudice and forego any appellate rights. The remaining Plaintiffs are presently contemplating their appellate rights and do not wish to dismiss the claims that were denied by the MSJ Order.

WHEREAS, the parties would like this case to proceed as efficiently as possible, and believe that dismissing the remaining Non-Contaminant Nuisance Claim is in the best interests of the parties and will conserve judicial resources by, among other things, avoiding a trial on that issue.

IT IS HEREBY STIPULATED AND AGREED TO by Plaintiffs and Defendants that, pending approval by the Court:

1. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, any and all claims by Plaintiffs Harold Bean and Melinda Bean against Defendants that are contained in Plaintiffs' First Amended Complaint filed on September 20, 2017, or that are otherwise at issue in this case, are dismissed with prejudice. As between Plaintiffs Harold and Melinda Bean and Defendants, and only as between Plaintiffs Harold and Melinda Bean and Defendants, the parties shall bear their own attorneys' fees and costs. The parties agree that this dismissal of the Beans will not impact Defendants' ability to recover their fees and costs from the other remaining Plaintiffs.

2. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiffs Kenneth Lake, Crystal Lake, Kyle Pahona, Ryan Wilson, and Heather Wilson's Non-Contaminant Nuisance Claim is dismissed with prejudice. Plaintiffs hereby relinquish any appellate rights in the Non-Contaminant Nuisance

Claim (but not any appellate rights based on those portions of Count XI based on alleged exposure to contaminants).

3. Defendants shall be permitted to file a motion for attorneys' fees and costs ("Fees Motion") following the Court's approval of this stipulation and pursuant to the requirements of LR 54.2. If Defendants file a Fees Motion, the motion will be briefed by the parties and decided by the Court pursuant to the Court's regular motion-setting calendar, and the Fees Motion will not be delayed by the resolution of any appeal filed by Plaintiffs. The parties agree that deciding the Fees Motion before the resolution of the appeal will provide them the most information about their respective positions. However, Defendants agree that they will not attempt to enforce or execute upon any fee award until after the later of (1) the expiration of the time for Plaintiffs to file a notice of appeal; or (2) a decision by United States Court of Appeals for the Ninth Circuit on any appeal in this case.

4. This stipulation moots the need for a hearing on MSJ No. 3, and MSJ No. 3 is withdrawn without prejudice.

5. Following the approval of this stipulation, there are no claims remaining in this case.

6. All appearing parties have signed this stipulation through their counsel.

DATED: Honolulu, Hawai'i, October 17, 2019.

/s/ Randall C. Whattoff

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DATED: Honolulu, Hawai'i, October 16, 2019.

/s/ P. Kyle Smith

P. KYLE SMITH
TERRANCE M. REVERE
Attorneys for Plaintiffs

APPROVED AND SO ORDERED:



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Kenneth Lake, et al. v. Ohana Military Communities, LLC, et al., Civil No. 16-00555-LEK-KJM, STIPULATION FOR (1) DISMISSAL WITH PREJUDICE OF ALL OF PLAINTIFFS HAROLD BEAN AND MELINDA BEAN'S CLAIMS IN THE FIRST AMENDED COMPLAINT; AND (2) DISMISSAL WITH PREJUDICE OF PLAINTIFFS KENNETH LAKE, CRYSTAL LAKE, KYLE PAHONA, RYAN WILSON, AND HEATHER WILSON'S ELEVENTH CLAIM FOR RELIEF (NUISANCE), TO THE EXTENT THE CLAIM IS BASED UPON CONSTRUCTION DUST GENERALLY